

PATENT APPLICATION

042390.P10397

Request for extension of time under 37 C.F.R. §1.136

Assignee herewith petitions the Director of the United States Patent and Trademark Office to extend the time for response to the Office Action dated May 8, 2002 for 1 month(s) from August 8, 2002 to September 8, 2002.

Please charge Deposit Account #02-2666 in the amount of:

- (\$110.00 for a one month extension)
 (\$400.00 for a two month extension)
 (\$920.00 for a three month extension)
 (\$1,440.00 for a four month extension)

to cover the cost of the extension.

Remarks

Reexamination and reconsideration of this application, as amended, is requested. Claims 1-20 remain in the application and claims 5 and 18 have been amended. No new claims have been added or canceled.

Applicant believes there is no charge for this response because no new claims have been added.

Support for Amendments

As indicated above, claims 5 and 18 have been amended to correct minor and inadvertent grammatical errors. This amendment is directed strictly to matters of form and, therefore, does not affect the scope of the claims or create any prosecution history estoppel.

Applicant respectfully submits that no new matter has been added.

Response to the 35 U.S.C. §112, Second Paragraph, Rejection

The Office Action rejects claim 1 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention because claim 1 recites a method step with just one step. Applicant respectfully traverses this rejection.

To begin, Applicant would like to kindly point out that 35 USC § 112, second paragraph does not contain any requirement that a method claim must recite more than one step.

Applicant believes the Office Action may be misapplying a requirement from 35 USC §112, sixth paragraph. However, since Applicant's claim 1 is not invoking analysis under 35 USC § 112, sixth paragraph, Applicant believes this rejection is in error. If the Office Action intends to maintain this rejection, Applicant respectfully requests clarification as to the basis in the basis being relied upon for the rejection.

With respect to claims 5 and 18, Applicant believes the grammatical error has been corrected and thus this rejection is believed to be moot.

Response to the 35 U.S.C. §102(b) Rejection

The Office Action also rejects claims 1-3, 11, 13, and 14 under 35 U.S.C. §102(b) as being anticipated by Drakoulis et al. (US 6,256,303). Applicants respectfully traverse this rejection in view of the remarks that follow.

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The relied upon document does not predate Applicant's filing date

Applicant would like kindly point out that the relied upon document was published on July 3, 2001. In order for a document to properly used under 35 USC §102(b) the document must be publicly available more than a year prior to Applicant filing date. Since the present application was filed on December 19, 2000, the relied upon document may not be used.

The Office Action did not establish a *prima facie* showing.

Applicant would also like to kindly point out that claims 1, 11, and 16 recite, among other things, a requested music file. Applicant is unable to find any reference in the Office Action to how the relied upon document teaches or suggested requested music files. As is well-established, in order to successfully assert a *prima facie* case of anticipation, the Office Action must provide a single prior art document that includes every element and limitation of the claim or claims being rejected. Further, 37 CFR §1.104 requires that the Office Action explain "[t]he pertinence of each reference". Thus, Applicant respectfully submits that claims 1-20 are patentable in view of Drakoulis et al.

Response to the 35 U.S.C. §103(a) Rejection

The Office Action also rejects claims under 35 U.S.C. §103(a) as being unpatentable over Drakoulis et al. in combination with other documents. However, as pointed out above, Drakoulis et al. entered the public domain after Applicant's application was filed. Thus, reconsideration is requested.

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Conclusion

The foregoing is submitted as a full and complete response to the Office Action mailed May 8, 2002, and it is submitted that claims 1-20 are in condition for allowance. Reconsideration of the rejection is requested. Allowance of claims 1-20 is earnestly solicited.

Should it be determined that an additional fee is due under 37 CFR §§1.16 or 1.17, or any excess fee has been received, please charge that fee or credit the amount of overcharge to deposit account #02-2666.

If the Examiner believes that there are any informalities which can be corrected by an Examiner's amendment, a telephone call to the undersigned at (480) 554-9732 is respectfully solicited.

Respectfully submitted,

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